

EXHIBIT J

Dedication, Easement and Maintenance Agreement

Return Address

Attn: _____

Document Title(s) (or transactions contained therein): 1. Dedication, Easement and Maintenance Agreement
Reference Number(s) of Related Documents: N/A (on page of documents(s))
Grantor(s) (Last name first, then first name and initials): 1. OLIVERMCMILLAN, LLC, a California limited liability company 2.
Grantee(s) (Last name first, then first name and initials): 1. CITY OF EVERETT, a municipal corporation 2.
Legal description (abbreviated: i.e. lot, block, plat or section, township, range) <input checked="" type="checkbox"/> Full legal is on pages ____ of document.
Assessor's Property Tax Parcel/Account Number

DEDICATION, EASEMENT AND MAINTENANCE AGREEMENT

This Dedication, Easement and Maintenance Agreement ("Agreement") is made as of the _____ day of _____, 2007, by and between OLIVERMCMILLAN, LLC, a California limited liability company ("**OM**"), and the CITY OF EVERETT a municipal corporation of the State of Washington (the "**City**").

RECITALS

A. Pursuant to that certain Property Disposition and Development Agreement dated _____, 2006 (the "Disposition Agreement"), by and between the City and OM, OM acquired from the City certain land located within the City of Everett, Snohomish County, Washington, adjacent to the Snohomish River and containing approximately 221 acres, legally described on **Exhibit A** attached to this Agreement (hereinafter, the "**Property**"). The Property is depicted on the site map attached to this Agreement as **Exhibit B**.

B. Pursuant to the Disposition Agreement, OM desires to (i) dedicate and grant to the City certain easements pertaining to certain public trails, gathering spaces, conservation areas, roads, utilities, pedestrian crossing and other public amenities on the Property and (ii) maintain, repair and reserve the Property, subject to the terms and conditions contained in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Easement Grants

1.1. Public Trails

OM hereby grants, transfers and conveys to the City perpetual and exclusive easement (the "**Public Trail Easement**") on, over, under and upon that certain real property more particularly described in **Exhibit C-1** (the "**Public Trail Easement Area**") and any improvements located thereon (including, without limitation, restrooms, shelters, utilities, plumbing and electrical systems, paths, pedestrian bridges and over-crossings, and benches).

1.2. Public Gathering Space

Within five (5) business days of the City's written request to OM (the "**Grant Date**"), OM shall execute and deliver to the City an easement in substantially the form attached hereto as **Exhibit D-1**, which agreement shall grant, transfer and convey to the City perpetual and exclusive easement (the "**Public Gathering Space Easement**") on, over, under and upon that certain real property more particularly described in **Exhibit C-2** (the "**Public Gathering Space Easement Area**") and any improvements located thereon (including, without limitation, restrooms, shelters,

utilities, plumbing and electrical systems, paths, amphitheaters, benches, play areas, signage and parking areas).

1.3. Wetland & Habitat Conservation Areas

OM hereby grants, transfers and conveys to the City perpetual and exclusive easement (the "**Conservation Easement**") on, over, under and upon that certain real property more particularly described in Exhibit C-3 (the "**Conservation Easement Area**") and any improvements located thereon.

1.4. Main Road

Within five (5) business days of the Grant Date, OM shall execute and deliver to the City an easement in substantially the form attached hereto as Exhibit D-2, which agreement shall grant, transfer and convey to the City perpetual and exclusive easement (the "**Main Road Easement**") on, over, under and upon that certain real property more particularly described in Exhibit C-4 (the "**Main Road Easement Area**") and any improvements located thereon (including, without limitation, streetlights; pedestrian and vehicular traffic lights, signs and markings; sidewalks; storm water collection, treatment and outfall systems; watermain; and public utilities).

1.5. Public Road

Within five (5) business days of the Grant Date, OM shall execute and deliver to the City an easement in substantially the form attached hereto as Exhibit D-3, which agreement shall grant, transfer and convey to the City perpetual and exclusive easement (the "**Public Road Easement**") on, over, under and upon that certain real property more particularly described in Exhibit C-5 (the "**Public Road Easement Area**") and any improvements located thereon (including, without limitation, streetlights; pedestrian and vehicular traffic lights, signs and markings; sidewalks; storm water collection, treatment and outfall systems; watermain; and public utilities).

3. Use of the Easement Areas

The Public Trail Easement Area, Public Gathering Space Easement Area, Wetland Conservation Easement Area, Main Road Easement Area and Public Road Easement Area shall be collectively referred to herein as the "**Easement Areas**." The City shall have and enjoy the Easement Areas for the public purposes set forth in Exhibit E and for any other public purpose that may be determined from time to time by the City. OM shall not access or use the Easement Areas for any use or purpose inconsistent with the rights granted herein. OM shall not make any alterations or install any improvements on the Easement Areas without the City's prior written consent.

3. Improvements

OM shall, at its sole cost and expense, make the improvements set forth on **Exhibit F** to the Property (the "**Improvements**"). All Improvements shall be completed in a careful and workmanlike manner on or before the deadlines set forth on **Exhibit G**, free of claims, liens or encumbrances (except for those liens or encumbrances that are expressly subordinate to the City's). OM shall submit plans for all Improvements to the City Public Works Department for approval and permits, in accordance with normal City standards and requirements, prior to undertaking the Improvements.

4. Maintenance and Repair

4.1. City's Maintenance Obligation

Except to the extent of OM's negligence or willful misconduct, or the negligence or willful misconduct of OM, each member, manager, partner or shareholder, as the case may be, in or of OM, and their respective officers, directors, managers, members, shareholders, partners, employees, agents and consultants (the "**OM Indemnified Parties**"), the City, at its sole cost and expense, shall maintain the Easement Areas identified on **Exhibit H** (the "**City Maintenance Area**") in accordance with normal City standards and requirements. If the City Maintenance Area is damaged by any of the OM Indemnified Parties, OM shall, at its sole cost and expense, promptly repair the City Maintenance Area to the condition it was in immediately before such damage occurred. Such maintenance and repair work shall be completed in a good and workmanlike manner in accordance with normal City standards and requirements.

4.2 OM's Maintenance Obligation

Except to the extent of the City's negligence or willful misconduct, or the negligence or willful misconduct of its employees, elected officials, representatives, agents and consultants (the "**City Indemnified Parties**"), OM, at its sole cost and expense, shall maintain the Easement Areas identified on **Exhibit I** (the "**OM Maintenance Area**") in accordance with normal City standards and requirements. If the OM Maintenance Area is damaged by any of the City Indemnified Parties, the City shall, at its sole cost and expense, promptly repair the OM Maintenance Area to the condition it was in immediately before such damage occurred. Such maintenance and repair work shall be completed in a good and workmanlike manner in accordance with normal City standards and requirements.

5. Cooperation

The parties have used their good faith efforts to identify and include in this Agreement all easements and rights-of-way on the Property that are reasonably necessary or desirable for the City's public amenities, utilities and facilities. If the City notifies OM that it has determined that

such easements or rights-of-way are inadequate for such purposes, then the parties shall cooperate in good faith to identify and implement modifications to such existing easements and rights-of-way or the creation of new easements or rights-of-way reasonably necessary or desirable to accomplish such purpose, subject to and in a manner consistent with applicable laws, prudent utility practices and that in each case such easements and rights-of-way will not unreasonably impair the intended use of the portions of the Property to be burdened by such easements or right-of-way. The parties shall further cooperate in good faith, and OM shall use good faith efforts to accommodate the City, in the City's development and construction of a street car or public transportation connection system anticipated by the City to link the Property with the central business downtown and waterfront areas.

6. Reservation for Utility Facilities

The City hereby reserves, and OM, as of the Grant Date, shall grant, transfer and convey to the City a non-exclusive, perpetual easement over, across along, in, upon, under and through the Property for the operation, maintenance, repair, replacement, improvement and removal of existing and future utility facilities located, or to be located, thereon. The approximate locations of such utility facilities are shown on Exhibit J.

7. Indemnification

7.1. Indemnification by OM

OM hereby indemnifies and agrees to defend, hold harmless and protect the City Indemnified Parties from and against any and all claims (including without limitation any claim for damage to property or injury to death of any persons), liens, or encumbrances, asserted by any third person that relates to OM's rights and obligations under this Agreement; provided, however, that the foregoing indemnity obligation of OM shall not apply to the extent caused by the negligence of any City Indemnified Party who is an agent of the City to the extent such actions are legally attributable to the City.

7.2 Indemnification by the City

To the extent permitted by applicable law, the City hereby indemnifies and agrees to defend, hold harmless and protect the OM Indemnified Parties from and against any and all claims (including without limitation any claim for damage to property or injury or death of any persons), liens, or encumbrances asserted by any third person that relates to the negligence or willful misconduct of the City or the City's servants, agents, employees, or contractors in any way related to the easements rights set forth in Section 1 above; provided, however, that (i) the foregoing indemnity obligation of City shall not apply to the extent caused by the negligence or higher level of culpability of any OM Indemnified Parties and (ii) in no event shall the City be responsible hereunder for any special, indirect, or consequential damages or for lost profits.

7.3 Process

The party claiming indemnification under this Section 7 (the “**Indemnatee**”) shall notify the other party (the “**Indemnitor**”) of any such claim for indemnification within thirty (30) days after the Indemnatee receives notice of the basis for such claim, but failure to notify the

Indemnitor shall in no case limit the obligations of the Indemnitor under this Section 7 except to the extent Indemnitor shall be prejudiced by such failure. Should Indemnitor fail to discharge or undertake to defend against such claim upon learning of the same, then the Indemnatee may litigate or settle such liability or submit such liability to arbitration or other alternative dispute resolution in its reasonable discretion and Indemnitor's liability shall include, but not be limited to, the amount of such settlement. The indemnification obligations contained in this Section 7 shall not be limited by any workers' compensation, benefits or disability laws, and City and OM each hereby waive any immunity that either party may have under any workers' compensation, benefit or disability laws.

8. General Provisions

8.1 Notices

All notices, demands, consents, approvals and other communications (each, a "Notice") that are required or desired to be given by either party to the other under this Agreement shall be in writing and shall be (a) hand delivered, (b) sent by U.S. registered or certified mail, postage prepaid, return receipt requested, or (c) sent by reputable overnight courier service, addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by Notice to the other. Notices shall be deemed given when delivered; provided, however, that if any Notice shall also be sent by telecopy or fax machine, such Notice shall be deemed given at the time and on the date of machine transmittal if the sending party receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered Notice. Rejection or other refusal by the addressee to accept a Notice or the inability to deliver the Notice because of a changed address of which no Notice was given shall be deemed to be receipt of the Notice sent. Notice addresses for the parties are as follows:

To City:

Attention: _____
Facsimile: _____

With a copy to:

Attention: _____
Facsimile: _____

To OM:

Attention: _____
Facsimile: _____

With a copy to:

Attention: _____

Facsimile: _____

Notice may be given by counsel for the parties, and such Notice shall be deemed given by City or OM, as the case may be, for all purposes under this Agreement.

8.2 Force Majeure

Whenever a period of time is prescribed for the taking of an action by either party (other than with respect to the payment of any deposit or money), the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to general strikes, acts of God, war, terrorist acts, civil disturbances and other causes beyond the reasonable control of the performing party ("**Force Majeure**"). Any party claiming a right to a Force Majeure extension shall notify the other party immediately of claimed right to an extension and the specific claimed basis for the extension.

8.3 No Oral Modifications

This Agreement cannot be changed or modified other than by a written agreement executed by both parties.

8.4 Successors Bound

Subject to the restrictions on assignment contained herein, the provisions of this Agreement shall extend to, bind and inure to the benefit of the parties and their respective personal representatives, heirs, successors and assigns.

8.5 Assignment

Neither party shall have the right to assign or transfer this Agreement or any of its rights or obligations hereunder without the express prior written consent of the other party, which may be withheld in its sole and absolute discretion.

8.6 Applicable Law; Regulatory Compliance

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. This Agreement does not, by its express terms or by implication, constitute (in whole or part) any grant, issuance, decision, order, permit, finding, conclusion, holding, recommendation, approval, determination or other form of governmental action as to any matter whatsoever. OM expressly acknowledges and agrees, and shall require any and all of OM's approved assignees to expressly acknowledge and agree, that City hereby gives no express or implied assurances or guarantees of any kind as to the outcome of any request for City development approval. No public or municipal services are provided to OM (or any OM assignee) by City pursuant to this Agreement, nor shall this Agreement in any way affect the

provision of any such services by City in any capacity by which City may extend such services to the general public and in accordance with applicable law.

8.7 Venue and jurisdiction

OM shall not commence or prosecute any suit, proceeding or claim to enforce the provisions of this Agreement or otherwise arising under or by reason of this Agreement other than in the state courts located in Snohomish County, Washington, or in federal court in the Western District of Washington. OM hereby irrevocably consents to the jurisdiction and venue of such courts.

8.8 Counterparts

This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

8.9 Attorneys' Fees

In the event that either of the parties to this Agreement brings an action or proceeding for a declaration of the rights of the parties under this Agreement, for injunctive relief or for an alleged breach or default, or in any other action arising out of this Agreement or the transactions contemplated hereby, the predominantly prevailing party in any such action shall be entitled to an award of reasonable attorneys' fees and any court costs incurred in such action or proceeding, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.

8.10 Captions

The captions of this Agreement are inserted solely for the convenience of reference only and do not define, describe or limit the scope or intent of this Agreement or any term hereof.

8.11 Waiver

No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by OM or the City of the breach of any obligation under this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition of this Agreement.

8.12 Further Assurances

If at any time either of the parties reasonably determines that any further assignments, conveyances, assurances or instruments are reasonably necessary or desirable to carry out the provisions hereof and the transactions contemplated herein, the appropriate party shall execute and deliver, or cause to be executed and delivered, any and all proper assignments and assurances and to do, or cause to be done, all things reasonably necessary or proper to carry out fully the provisions hereof, provided that such things shall be at no additional material cost, expense or liability (beyond that set forth in this Agreement) to such party.

8.13 No Third Party Beneficiaries

This Agreement is intended for the benefit of OM and the City and no other person or entity shall be entitled to rely on this Agreement, receive any benefit from it or enforce any provisions of it against OM or the City.

8.14 Time

The parties agree that time is of the essence in the performance of the provisions of this Agreement.

CITY:

CITY OF EVERETT, a Washington municipal corporation

By _____
Ray Stephanson, Mayor

ATTEST:

By _____
Sharon Marks, City Clerk

APPROVED AS TO FORM:

By _____
Elmer E. "Ned" Johnston, City Attorney

Date: _____

ME:

OLIVERMCMILLAN, LLC

By: _____
Name: _____
Title: _____
Date: _____

NOTE: INSERT NOTARY BLOCKS

EXHIBITS:

- Exhibit A – Legal Description of Property
- Exhibit B – Parcel Map
- Exhibit C-1– Public Trail Easement Area
- Exhibit C-2– Public Gathering Space Easement Area
- Exhibit C-3– Wetland Conservation Easement Area
- Exhibit C-4– Main Road Easement Area
- Exhibit C-5– Public Road Easement Area
- Exhibit D-1–Public Gathering Space Easement Form
- Exhibit D-2–Main Road Easement Form
- Exhibit D-3–Public Road Easement Form
- Exhibit E – Uses of Easement Areas
- Exhibit F – Description of Improvements
- Exhibit G – Improvements Schedule and Deadlines
- Exhibit H – City Maintenance Areas
- Exhibit I – OM Maintenance Areas
- Exhibit J – Utility Easement Areas

Exhibit E

Public Trail Easement Area Uses:

Public Gathering Space Easement Area Uses:

Wetland Conservation Easement Area Uses:

Main Road Easement Area Uses:

Public Road Easement Area Uses: